2013 WL 2616469 (La.App. 3 Cir.) (Appellate Brief)
Court of Appeal of Louisiana, Third Circuit.

John Ford DIETZ, Plaintiff-Appellant Cross- Appellee,

v.

Anne Bennett MORRISON DIETZ, et al., Defendants-Appellees Cross- Appellants.

No. 13-00186-CA.
April 19, 2013.

Civil Proceeding
On Appeal from the Fifteenth Judicial District Court for the Parish of Vermilion, State of Louisiana, Docket No. 88309, Division "B", the Honorable Jules Edwards, III, Judge.

Cross-Appellee's Response Brief on Behalf of Plaintiff-Appellant / Cross-Appellee, John Ford Dietz

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***1 MAY IT PLEASE THE COURT:**

Plaintiff-Appellant/Cross-Appellee, John Ford Dietz, hereby respectfully submits his Original Cross-Appellee's Response Brief in the captioned matter.

INTRODUCTION AND SUMMARY

Defendant Richard Morrison's (“Defendant”) appellant brief is almost without exception simply a word for word re-print of the same arguments put forth before the District Court for consideration by way of Defendant's and his sister's (Anne Bennett Morrison Dietz's Defendant Mrs. Morrison”)) *Motion for New Trial* filed January 26, 2012 (in the appellate record at I R. 183).

Defendant's legal arguments, with some very limited exceptions, are also largely fact based and inappropriately ignore consideration of the great weight of evidence presented at trial which is directly contrary to Defendant's characterization of the evidence he currently pushes by way of his appellant brief. Additionally, Defendant's arguments challenging the sufficiency

of the evidence to support the District Court's findings were considered by the District Court, which was in the best position to evaluate first-hand the veracity of the witnesses and otherwise weigh the evidence, and his arguments were appropriately rejected by the District Court in light of the extensive pre-trial proceedings and extensive testimony and document evidence presented during the six (6) day bench trial.

With regard to the assertions of purported "fact" appearing throughout Defendant's appellant brief concerning the evidence supposedly presented at trial, the pre-trial proceedings, and the dispute between the parties otherwise, there is a reason Defendant consistently fails in his brief to provide appropriate record references as required by the appellate rules. Defendant, just as he routinely did with the District Court, is, again, consistently making false statements and/or providing half-truths which tend to directly deceive or mislead.

***2** The District Court, in fact, expressly recognized in its judgment the Defendant's and his sister's nature regarding false and misleading statements; **"Anne Morrison and Richard Morrison were not credible witnesses and were inaccurate historians"** (I. R. 222 (District Court's *Amended Judgment*)).

A very clear example of Defendant's false statements to this Court, as well as the District Court, is as follows:

Defendant asserts in his brief that "[n]either [Mr. Dietz] nor any of his other witnesses had any direct knowledge of any instructions given by Defendants to their Mexican attorneys, so no evidence in support of this conclusion was presented." *Defendant's Brief* p. 24 (lines 10-13).

Defendant, in fact, repeated the same false statement when called as a witness in Mr. Dietz's case-in-chief and directly questioned about his personal contacts with the Mexican attorneys (V R. 929 (line 27) through 931 (line 19)):

Q. [By Mr. Dietz (pro se representation)]:

Did you give him [Reyes Retana, the main Mexican attorney] legal instructions or tell his what you want done in the case, or let's say play lawyer or something with regard to the case?

A. [Defendant (Richard Morrison]: Absolutely not.

Q. (Handing [identified exhibit to Defendant Mr. Morrison])

Do you recognize your writing to Santiago [one of Reyes Retana associates in Mexico attorney's office] saying, I know that licenciado Reyes Retana does not like me to quote / unquote play lawyer?

A. [Defendant (Mr. Morrison)]:

Yes. This is - -I had forgotten about this.

Q. Oh, you had forgotten about this. So you're writing to one of Reyes Retana's associates that you know Reyes Retana doesn't like you to play lawyer?

A. **[Defendant (Mr. Morrison)]:**

Yes, I know that, he has no - - guess a lot of contempt for Americans playing lawyer with the Mexican legal system.

Q. **Didn't you just testify that you wouldn't play lawyer, wouldn't give him advice, you wouldn't tell him what to do under Mexican law?**

A. **[Defendant (Mr. Morrison)]:**

That's right, I would not give him advice, he would take advice.

Q. **And then do [you] also reference next Articulo 173, some additional Mexican law?**

A. [Defendant (Mr. Morrison)]: Yes, and I reference Articulo through 177 as well.

***3** Q. All right. So you reference Articulo 174, 175, 176, 177, and then it's signed with your typed name "Richard"?

A. [Defendant (Mr. Morrison)]:

Yes, I cut and pasted from the federal penal code in Mexico.

Q. So you testified five minutes ago that you didn't play lawyer with Reyes Retana and you didn't give him legal advice, but then you're citing Mexican law to him, and stating even, I know licenciado Reyes Retana doesn't like me to quote/ unquote play lawyer, and those are your quotation marks.

A. [Defendant (Mr. Morrison)]: '

It says wouldnt John Dietz be in trouble for listening. I was asking a question citing Mexican law.

Q. But you weren't playing lawyer?

A. **[Defendant (Mr. Morrison)]:**

I dont consider showing someone the code playing lawyer.

Q. But you wrote to Reyes Retana's office, if I may: (Reading) Hi, Santiago. I know that licenciado Reyes Retana doesn't like me to

quote/unquote play lawyer.

A. **[Defendant (Mr. Morrison)]:**

Yes, and I know that he doesn't.

Mr. Dietz: No further questions. Your Honor, I'd move --

V R. 929 (line 27) to 931 (line 19)); Tr. Ex. P-37 (admitted at V R. 932).

Thus, **after Defendant unequivocally testified "Absolutely not" to the question whether he gave "legal instructions" or told "what you want done" or "play[ed] lawyer" with regard to Reyes Retana, the Mexican attorney,** and was then **confronted with the fact of his own email** to the Mexican attorneys stating that **he "knows Reyes Retana" did not like him to "play lawyer," Defendant admits his "Absolutely not" sworn testimony was NOT true.** *Id.*

The fact is, Defendant falsely testified at trial, got caught, not once, but many, many times, by the District Court (which, again, found Defendant a "not credible witness" and an "inaccurate historian") and now is simply engaging in the same pattern of inappropriate representations with this Court.

STATEMENT OF FACTS (TO CORRECT SOME FALSE ASSERTIONS)

1. Defendant's purported "fact" assertion in his brief that the District Court's finding that "[Defendants] authorized their Mexican attorney to use intense tactics against [Mr. Dietz's is "unsupported by the evidence" at trial *(Defendant's Brief, p. 24)* is **NOT** true. Among much other evidence ***4** overwhelmingly establishing Defendant and his sister, as early as February, 2006, knew precisely of the Mexican attorney's inappropriate Mafiaso type tactics and well-known reputation for such presented at trial, during direct testimony Defendant Mrs. Morrison acknowledged her voice on an early 2006 recording (Tr. Ex. P-17) in which she laughed about the main Mexican attorney, Reyes Retana, after he was referenced as a "hitman" and then she facetiously indicated she had no idea about his "tactics" and next volunteered that her instructions to Reyes Retana were to "go for broke" and that "the sky is the limit" in terms of acting against Mr. Dietz. (I R. 435-36). Defendant Mrs. Morrison then testified at trial that she was simply "joking." (*Id.*). When further questioned by the District Court as to what she meant when she said "the sky is the limit," she indicated "[w]ell, at that time [early 2006] I guess whatever he could do..." .R. 439.

As detailed in Mr. Dietz's appellant's brief, six (6) witnesses testified at trial as to Reyes Retana's intense extra-judicial tactics and his well know reputation in the community for such (II R. 276-82, 289-312; 325; 345-50; III R. 468-70; 563-65; IV R. 696-97; 747-53; 765-66; I R. 65-68). Mrs. Morrison, at the time of her statement in 2006, had lived in the community for most of the previous eight years.

Also completely at odds with Defendant's "unsupported by the evidence" claim to this Court is Defendant having admitted at trial that (1) Defendant knew in 2009 that Retana had five criminal actions pending against Mr. Dietz (V R. 964); (2) Defendant was directly communicating with Retana and paying Retana (V R. 929-32; 936; 1013; 1015); (3) Defendant having admitted at trial the fact that after, again after, Defendant and his sister were served with the original and amended Petitions in this legal proceeding detailing Retana's false criminal charges, assault, harassment, intimidation and death threats, they were on notice of Retana's actions, yet kept him on as their attorney and continued to pay him (V R. 1010-14; ***5** IV R. 758; II R. 406-07; 465); and (4) Defendant admitting at trial that "I did nothing to attempt to protect you [Mr. Dietz] [from Retana], no." (V R. 1011).

Additionally on this point, Luz Maria Rodriguez, who was qualified as a Mexico civil law expert during the trial, testified that Reyes Retana blackmailed Mr. Dietz "because it was Ms. Morrison's will to do so." (III R. 469-70).

2. Defendant's "fact" assertion in his brief that "[T]here was no direct evidence submitted of any changes in either son, as neither testified at trial" (*Defendant's Brief*, p. 23) as the result of Defendant Mrs. Morrison illegal taking the boys to Mexico during 2007 and other wrongful actions (Defendant's Brief, p. 23) is **misleading** in that although, it's true the boys were not called to testify at trial, **Defendant's "fact" assertion regarding there being no "direct evidence" at trial regarding the changes to the boys is NOT true.** Among, much other testimony regarding how the boys were effected by what occurred, Iniani Cardenas, Mr. Dietz's present wife, with whom the boys had lived with full-time from January 2003 through the late 2007 illegal taking, testified that when the children were returned to Mr. Dietz in December of 2007, Angus, the younger boy, showed signs of physical abuse, including a wound on his neck (II R. 338-40; Tr. Ex. P-1), and told Iniani that Defendant's sister had hit him (II R. 339 (lines 14-15 ("That was the scar of the hit that Angus says he received from Anne" [Defendant Mrs. Morrison])) (photo of wound introduced at trial as exhibit).

When Mrs. Cardenas was expressly asked what the nature of Angus (younger boy) was like before versus after he was illegal taken during late 2007, she testified, "First he was always friendly to everybody, nice to everybody, never say, like, mean words or act mean to the people" and after he was taken he was "completely different and he start being aggressive, using a bunch of bad words, referring to the people in a mean way, trying to hit the plants and hit things to take all the upset feelings he has

inside of him." (II R. 364). When asked "Is it fair to ***6** say after he returned after being with [Defendant] Mrs. Morrison for four months [late 2007] he was a different kid?, Inani answered "Yes, completely." (II R. 364).

3. Defendant, in an utterly deceptive and misleading manner, asserts in his brief, page 20, that "The [District Court's] judgment states that calling Mr. Dietz an 'international fugitive' was defamatory and untrue. However, Mr. Dietz testified that he 'fled' Mexico to avoid being thrown in jail" and, as Defendant's record support, he references "e.g. II R. 6, lines 25-26." What Defendant is asserting is misleading and **NOT true.** First, the record reference is not correct, there simply is no such place in the appellate court record; Volume II of the official appellate record starts with page "244" and Volume I ends with page "243," and the District Court official court reporter transcript "Vol. II" record begins with page "202" and ends at page "262."

Second, wherever in the actual record Defendant may be attempting to refer the Court to simply cannot support what he is claiming because both Mr. Dietz and his wife, Iniani Cardenas, testified in detail at trial that Mr. Dietz left Mexico in April 2006 following the unlawful threat of the Mexican attorneys that Mr. Dietz would eventually be put in jail *on yet to be filed false, trumped-up charges* (if Mr. Dietz did not agree to promptly pay money and sign over his interest in real property to Defendant's sister to which she was not entitled), *NOT actual criminal charges* which had been filed against Mr. Dietz. (IV R. 703, 707-08). Such does not in any way, shape, or form make Mr. Dietz an "international fugitive." *Id.*

4. Defendant, again without any references to the Court record, argues that the District Court's determination that there was never any "felony" arrest warrant such to support the defamation finding because, according to Defendant, Mr. Dietz "had actually been convicted on multiple criminal counts" (*Defendant's Brief* 20 (emphasis by Defendant)). However, where is Defendant's record reference regarding Mr. Dietz "actually [having] been ***7** *convicted on multiple criminal counts*"? There are none. Again, Defendant has provided no record references because what he is claiming is **NOT true** and, also, completely at odds with the extensive trial testimony of numerous witnesses, including two Mexico attorneys, one accepted by the District Court as an expert in civil law and the other accepted by the District Court as an expert in criminal law. (III R. 446-549 (Luz Maria Gonzales); III R. 550-601 (Nicholas Michel Shaheen)).

The fact is that there was no arrest warrant for child abduction against Mr. Dietz and, in fact, as the expert testimony presented at trial conclusively established, in Mexico no parent can be found guilty of kidnapping his or her own child (II R. 262; II R. 453-454; 463).

The real testimony at trial was just the opposite of what Defendant, without record references, claims regarding Mr. Dietz's supposed conviction on "multiple criminal counts;" **Nicolas Shaheen (whom District Court accepted as expert in Mexico criminal law) testified that Mr. Dietz had been falsely accused of crimes in Mexico "seven or eight times" (III R. 573; 571-72), and that Mr. Dietz had never been found guilty of any crime** (III R. 581; IIIR. 366; 381-90).

5. Defendant also misleadingly references the Hague Convention Federal court decision as supposed proof regarding all manner of supposed improper actions (Defendant'ss Brief p. 21, 19, 2) on the part of Mr. Dietz (*Defendant's Brief* p. 21, 19, 2), however, such is **misleading** because the single legal claim actually litigated in the Hague Convention proceeding was whether Mexico or the United States was the proper jurisdiction and venue as to custody determinations and the two minor boys, Albert and Angus. (IV R. 662-63 ("In the Hague Convention proceeding, which is, again, were [with] this international treaty" "it's determined under the treaty where, in essence, where is the appropriate jurisdiction and venue for people to fight about custody"). Moreover, in the Hague Convention legal proceeding there was not one single witness who was a ***8** Mexico licensed attorney, much less any witness qualified as a Mexico law expert concerning anything. In contrast, in the present legal proceeding, two Mexico licensed attorneys provided extensive testimony regarding Mexican law as to the matters at issue and, despite challenge by Defendant's legal counsel during trial, both were accepted by the District Court as being properly qualified as experts, one in Mexico civil law and one in Mexico criminal law.

The decision in the Hague Convention case simply did not directly or indirectly encompass contested litigation regarding the factual grounds of the extortion, defamation, and intentional infliction of emotional distress at issue in this proceeding. (IV R. 663 ("all that the [Hague Convention action] determined [was] that it was appropriate for Mexico to be the proper jurisdiction.").

6. Defendant's assertion in his brief (p. 9) that **"to date, his only contacts with Louisiana have come in the form of a single letter that was faxed to the state over four years ago, two or three telephone calls, and six email messages that were either sent or copies to a recipient in Louisiana over a three year period" is NOT true.** Defendant is very conveniently for himself forgetting, not only his co-conspirator role in the taking of the two boys illegally from Louisiana by Defendant Mrs. Morrison and his co-conspirator role in Mrs. Morrison's other Louisiana focused actionable conduct against Mr. Dietz, but also the true number of emails sent to multiple Louisiana residents (Tr. Exs. P-20, P-21, P-22, P-23, P-24, P-30, P-31, P-32, P-33, P-34, P-35, P-36), some of which were, as a single email, sent at one time to as many as three (3) and four (4) Louisiana residents (Albert Dietz (Louisiana resident), Charlie Fitzgerald (Louisiana resident), Scott Winstead (Louisiana resident), Tim McNamara (Louisiana resident) and John Dietz (Louisiana resident)), as well as the fact of him actually telephoning Albert Dietz, Mr. Dietz's father, repeatedly over the pertinent 2007 through 2010 time period, telephoning Mr. Dietz's mother in Louisiana, the ***9** threatening co-conspirator communications to Mr. Dietz necessitating Mr. Dietz's January 2007 report to the Vermilion Parish Sheriffs office (Report No. "0543-07" (I R. 67)), Defendant's having expressly directed Kurth Bousman to "go ahead and blast Albert Sr." in Louisiana (resulting in three (3) additional Louisiana directed defamatory emails concerning Mr. Dietz by Mr. Bousman to Albert Dietz in Louisiana), Defendant's non-confidental referenced defamatory correspondence to office St. Peters School in Gueydan, Louisiana, sent to its general fax number at the secretary office, and all of his five plus years of other deliberate persecution of a Louisiana resident, Mr. Dietz, and Mr. Dietz's Louisiana resident family members, not to mention all of the emotional suffering Defendant intentionally caused in Louisiana to Louisiana resident Mr. Dietz. (IV R. 711-12; 714-26; Tr. Ex. P-17, IV R. 758, 861-68; I R. 67-70; IV R. 662-63; Tr. Ex. P-3, P-4; IV R. 822-833; IIR. 411; V R. 1114-15; Tr. Ex. P-2; IIR. 320-40; IV R. 847; IV R. 727-36; II R. 425-30; V R. 941-42; IV R. 736-37; V R. 961-63; IV R. 846-48; Tr. Ex. P-36; V. R. 898-905; III R. 639-42; IV R. 765-71, 769; II R. 364-65; II R. 376-80; IV R. 842-43; IV R. 734-35, 773; IV R. 749-50; Tr. Ex. P-28; IV R. 747, 758).

Moreover, it was not only the great volume of Defendant's Louisiana focused actionable conduct over years of time, but also the substantive vicious magnitude and repetitiveness of his morally reprehensible conduct; Defendant, often repeatedly, emailed the following false statements regarding Mr. Dietz to, at times, as many as five separate Louisiana residents (Albert Dietz, Mr. Dietz, Fitzgerald, Winstead, McNamara): Dietz 1) has "multiple felony arrest warrants for him" (IV R. 834-35); 2) "ability to practice law [is, or will be] in jeopardy" (IV R. 834-35; 877); 3) "no parental rights" (IV R. 838; 878); 4) "failed in his legal obligations" and "tens of thousands of dollars" in arrears (IV R. 838-39; 843; 851); 5) in arrears $72,000.00 (IV R. 720; 851; V R. 1034); 6) arrearages "would likely qualify as a federal crime" (Exs. P-30, P-31; IV R. 722-23; IV R. 838-43; 851-58).

***10** As shown by extensive testimony, including the unrefuted opinions of Mexican law experts noting that Mr. Dietz did not have any felony arrest warrants, **Mr. Dietz was not without parental rights, Mr. Dietz was not in arrears on child support or alimony and had actually overpaid his support obligations,** *none* of Defendant's statements were true (III R. 475-488; 496-500). Mr. Dietz paid his obligations until they were automatically relieved under Mexican law and even paid some years he didn't have to: "Q. So you're saying that [Mr. Dietz] paid alimony for a couple of years freely? A. Yes." Id., 496-500.

Defendant, in his extortion emails to Mr. Dietz's father, expressly threatened that the family's access to the children was at risk and maliciously admitted that he **knew the "pain" that must be being suffered** by Albert Dietz and the rest of the family (Tr. Ex. P-31; IV R. 834-35; 838-39; 852-58). He also threatened that **"[w]e [Richard Morrison and Anne Morrison] are fully prepared to play 'hardball' extremely swiftly and aggressively"** (IV R. 839; 843).

ARGUMENT

I. THE AMENDED JUDGMENT NEED NOT BE VACATED BECAUSE OF THE DISTRICT COURT CLARIFICATIONS.

The further clarifications of the Amended Judgment include the "phraseology [clarification] of the 13 January 2012 [Original] Judgment to explicitly state that which was only implied in the prior judgment" (I R. 217) and the inclusion of an express statement that Defendants were engaged in a conspiracy and solidarily liable under LSA-C.C. art. 2324 (I R. 222). The District Court also expressly added in the Amended Judgment its further clarification that the Defendants "Anne Morrison and Richard Morrison were not credible witnesses and were inaccurate historians" *(Amended Judgment,* p. 6 (I R. 222)).

It is believed that the District Court was entitled to alter the phraseology of the Original Judgment for three reasons. First, under LSA-C.C.P. Art. 1951, "A ***11** final judgment may be amended by the trial court at any time, with or without notice, on its own motion or on motion of any party: (1) To alter the phraseology of the judgment, but not the substance;..." *Id.* Second, the ruling came in response to Defendants' Motion for New Trial on an aspect of the Judgment that both parties agreed in their Memoranda needed to be clarified or corrected. Finally, the district court was authorized to grant a motion for new trial on its own motion under LSA-C.C.P. art 1971, which provides: "A new trial may be granted, upon contradictory motion of any party or by the court on its own motion..." *Id.*

However, in the event that this Court is of the opinion that it was error for the district court to alter the Judgment, this Court could simply amend the Original Judgment to express the district court's implicit findings regarding the existence of a conspiracy and solidary liability under LSA-C.C. art. 2324.

II. THE EXERCISE OF SPECIFIC JURISDICTION OF THE COURT OVER DEFENDANT WAS ENTIRELY PROPER.

Initially, please reference Statement of Facts section "6" of this brief for corrections regarding some of Defendant's false and/or half-truth assertions.

Defendant, in essence, asserts that the Judgment was contrary to law because this Court lacked specific jurisdiction over him with respect to certain **activities** (wrongly described as "claims") mentioned by the District Court that supposedly had no connection with the Louisiana forum. Although the court listed numerous instances of false, defamatory and damaging communications directed to Dietz, his father, his wife and Mr. Gardner, as well as many others, who were all Louisiana residents during the pertinent times, in support of its ruling on the three **claims** (See, Judgment, p. 2), Morrison urges that the court had no specific jurisdiction over the few instances of conduct mentioned in the opinion that were allegedly not directed to Louisiana, including the false bar complaints and communications to individuals in New York and Mexico. This argument is without merit.

***12** First, specific jurisdiction is "claim specific" and therefore must be analyzed with regard to each of the three **claims;** defamation; intentional infliction and extortion, and not each individual activity underlying those claims. See, *Seiferth v. Helicopteros Atuneros, Inc.,* 472 F.3d 266, 275 (5th Cir.2006), in which the Court held that specific personal jurisdiction is a *claim-specific inquiry.*

Thus, the court may properly weigh the contacts and decide that specific jurisdiction exists as to each claim or cause of action; and is not required to conduct a jurisdictional analysis of all of the activities underlying each claim. See, *Dietz v Dietz,* 2009 WL 2707402 (W.D. La. 2009), wherein the federal district court, prior to remand, held that Louisiana courts had specific jurisdiction based solely upon Defendant's threats to plaintiff of restricted access to the children.

Moreover, all of Defendant's wrongful actions comprised activities part of his entire, long-continuing, campaign of persecution against Mr. Dietz and there is no requirement that all the activities giving rise to a particular claim under the campaign of persecution need occur in Louisiana.

The 2008 Federal district court's decision in this proceeding regarding specific jurisdiction was based only upon his conduct up to 2007. Following the 2008 ruling, Defendant, apparently not content with all the actionable conduct he had already engaged in, continued his Louisiana directed defamation, intentional infliction of emotional distress, and extortion.

During 2009, Defendant and/or one of his co-conspirators acting at his direction and on his behalf, sent a defamatory e-mail to Mr. Dietz's current wife, Iniani, while she and Mr. Dietz were Louisiana residents. II R. 370-72; Tr. Ex. P-7.

In 2010, Defendant repeatedly contacted Mr. Dietz's **elderly**, physically ailing father, who resided in Louisiana and, among other actionable conduct, attempted to extort money from Mr. Dietz by threatening exposure, criminal ***13** prosecution and imprisonment in Mexico based upon false charges if Mr. Dietz did not agree to pay money and comply with demands. (IV R. 846-48; 867-68; 758).

Next, even the out of state activities were "purposefully directed" towards Mr. Dietz, a Louisiana resident, and support the exercise of specific jurisdiction. It is well settled that "A court may exercise specific jurisdiction over a nonresident defendant when the defendant has **purposefully directed its activities at residents of the forum state** and the litigation results from alleged injuries that arise out of or relate to those activities." *Enviroshield Technologies, L.L.C. v. Lonestar Corrosion Services, Inc.*, 2011 WL 3242302, 6 (La. App. 1 Cir. 2011) (emphasis added), citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8, 104 S.Ct. 1868, 1872 n. 8, 80 L.Ed.2d 404 (1984). In connection with this inquiry, the Court must consider "all contacts, whether occurring before or after the filing of the lawsuit, having relevance to the alleged ongoing tortious conduct, in determining whether Louisiana may assert specific jurisdiction over the defendants." *Enviroshield, supra*, at p. 7 (emphasis added).

The alleged out of state conduct meets the foregoing requirements. First, the false Bar complaints filed in Colorado, New Mexico and the Navajo Nation (II R. 254), and the other out of state communications were "purposefully directed at" and harmed Mr. Dietz, a Louisiana resident. Moreover, the false information in those complaints was obtained from Defendant Mrs. Morrison, a co-conspirator over whom the court has general jurisdiction. Further, Defendant encouraged Mr. Bouseman to transmit the allegations and substance of those false complaints to plaintiff's father, a Louisiana resident. Judgment, p. 3. Finally, Defendant transmitted the substance of the Bar complaints to three Louisiana residents, Albert Dietz, Charlie Fitzgerald, Scott Winstead, in a defamatory email. See, Tr. Ex. P-35.

Other decisions support the exercise of specific jurisdiction against Defendant. *In Denmark v. Tzimas*, 871 F. Supp. 261 (E.D. La. 1994), the court ***14** held that one libelous phone call to a Louisiana resident was sufficient contact with the state. The court in Denmark also discussed other cases in which "a non-resident's mere communications into Louisiana" have been held to constitute "acts or omissions" for purposes of the Louisiana long arm statute, LSA-R.S. 13:3201(3). *Denmark, supra*, 871 F. Supp. at 268-9, *citing Kempe v. Ocean Drilling & Exploration Co.*, Civ. A. No. 86-891, 1987 WL 11163, at p. 1 (E.D. La. May 1987) (wire and telephone communications into Louisiana by a nonresident constituted "acts or omissions" sufficient to confer personal jurisdiction under R.S. 13:3201(3)) (*citing Simon v. United States*, 644 F.2d 490 (5th Cir.1981)).

In addition, "we are regularly reminded that Louisiana's long-arm statute is to be liberally construed in favor of the exercise of jurisdiction." *Denmark, supra*, 871 F. Supp at 268-9, *citing Kempe v. Ocean Drilling & Exploration Co.*, 1986 WL 14790, at p. 1. For these reasons, "'Louisiana courts have consistently found its long arm statute applicable, and constitutionally permissible, where a single act in Louisiana, by a person or thing for which the non-resident tortfeasor is responsible, **contributes to** the injury."' *Id.* (emphasis added) (*quoting Simon*, 644 F.2d at 497, n. 10). *See also Aucoin v. Hanson*, 207 So.2d 834 (La. App. 1968) (nonresident subjected to Louisiana personal jurisdiction on the basis of a telephone call from out of state into Louisiana).

In *Calagaz v. Calhoun*, 309 F.2d 248, 256 (5th Cir. 1962), it was held that **correspondence alone** establishes sufficient contacts with a state to subject a non-resident to a suit in state on a cause of action arising out of the contacts. The Fifth Circuit: 'When

the acts **take effect** within the state of the forum, it would seem fair and reasonable for that state to open its courts to the aggrieved person." id.

Other cases include *Zidon v. Pickrell*, 344 F. Supp. 2d 624, 627 (D.C. ND 2004) (long-arm jurisdiction upheld for defamation and intentional infliction of emotional distress claims where defendant knew her ex-boyfriend was a resident of ***15** the state, knew that **the brunt of the injury** would be felt in that state, directly targeted the forum through e-mails to state residents containing hyperlinks to the site, and particularly targeted the defendant); *Brown v. Flowers Indus., Inc.*, 688 F.2d 328, 330 (5th Cir. 1982), *cert. denied*, 103 S.Ct. 1275, 460 U.S. 1023, 75 L.Ed.2d 496 (long-arm jurisdiction upheld under Due Process analysis where non-resident initiated a telephone call to forum, allegedly committed an intentional tort, and the **injurious effect of the tort fell in forum,** which non-resident easily could have foreseen); *Banner Promotions, Inc. v. Maldonado*, 56 F. Supp. 2d 552 (DC Pa. 1999) (exercise of long-arm jurisdiction held consistent with Due Process where forum state was "focal point" of tortious activity of non-resident defendant where intentional tort alleged, plaintiff felt **brunt of harm in forum state,** and defendant expressly aimed tortious conduct at forum).

In sum, considering that Mr. Dietz, a Louisiana resident, was the "focal point" of all of the tortious activities of the vicious campaign of persecution and that the acts would "take effect" in Louisiana and that the "brunt of the injury" would be felt in Louisiana by a Louisiana resident, the District Court properly exercised specific jurisdiction over all of the tortious activities of the defendants.

III. THE DISTRICT COURT WAS CORRECT TO NOT ASSIGN A PERCENTAGE OF FAULT TO NON-PARTY TORTFEASORS.

Defendant next argues that the District Court erred in determining not to assign any percentage of fault to certain non-parties. *(Defendant's Brief*, p. 12). There are two problems with his argument. First, the argument is without merit in light of all the facts and circumstances of what occurred as established at trial, including, but not limited to, Defendant hiring, instructing, and approving of the morally reprehensible and actionable conduct of the third parties, his agents. Second, Defendant failed to preserve at trial any claim of error regarding.

***16** As initially brought to this Court's attention in Mr. Dietz's original appellant brief (p. 35, fn. 5), fault should not be apportioned to non-parties, such as Reyes Retana and his associates, because Defendants hired them to harass and abuse the Mr. Dietz, and further, Defendants never asserted the affirmative defense of comparative fault or proved such fault at trial as required to hold non-parties at fault. LSA-C.C.P. art. 1005; *Begnaud v. Camel Contrs., Inc.*, 98-207 (La. App. 3 Cir. 10/28/98), 721 So.2d 550, 556, *writ den.*, 98-2948 (La. 2/5/99), 738 So.2d 1.

At trial, defendants called only one witness, Defendant, who never testified that actions of Reyes Retana were "a cause in fact of the damage being complained about." *Begnaud*, 721 So.2d at 556. In fact, Defendant lauded and otherwise approved of Reyes Retana as a "highly regarded attorney," "very competent" (V R. 949) and "one of the most ethical people I know" (V R. 1015-16).

The District Court's apportionment of fault was appropriate and, regardless, Defendant failed to preserve any claim of error.

IV. THE DISTRICT COURT DETERMINATION TO NOT EXPRESSLY APPORTION FAULT IS A NON-ISSUE.

It is believed appropriate that the District Court did not apportion fault between the defendants under LSA-C.C. art 2323, because such would not change anything as a practical matter because the solidarily liable defendants are each liable to pay the entire judgment. *See id.* In *Oubre v. Eslaih*, 2002-1386 (La. App. 4 Cir. 2/26/03), 840 So. 2d 54, the court indicated that any error in the trial court's failure to apportion fault was harmless where liability was solidary.

However, in the event that this Court feels it was improper for the trial court not to apportion fault, this Court may easily correct the error by apportioning fault 50% to each defendant based on the District Court's findings regarding the conspiracy and extensive record of collective wrongful actions on the part of defendants as is exhaustively evident throughout the District Court's findings.

***17** In *Chrysler Credit Corp. v. Whitney Nat. Bank,* 51 F.3d 553, 557 (5th Cir.1995), the Fifth Circuit, applying Louisiana law and, specifically, Article 2324, discussed the nature of civil conspiracy as follows:

> He who conspires with another person to commit an intentional or willful act is answerable, in solido with that person for the damage caused by such act. The unlawful act is tortious conduct. *Cust v. Item Co.,* 200 La. 515, 8 So.2d 361 (1942), *ovr'd in part,* 9 to 5 *Fashions v. Spur.,* 538 So.2d 228 (La. 1989). The action is for damages caused by acts committed pursuant to a formed conspiracy, and all of the conspirators will be regarded as having assisted or encouraged the performance of those acts. *Nat. Un. Fire Ins. Co. v. Spillars,* 552 So.2d 627, 634 (La.Ct.App.1989). **The plaintiff must therefore prove an unlawful act and assistance or encouragement that amounts to a conspiracy. Id. This assistance or encouragement must be of such quality and character that a jury would be permitted to infer from it an underlying agreement and act that is the essence of the conspiracy.** *See Silver v. Nelson,* 610 F. Supp. 505, 517 (E.D. La. 1985).

Chrysler Credit, 51 F.3d at 557 (emp. added). Thus, Mr. Dietz need merely prove an unlawful act and assistance or encouragement that amounts to a conspiracy.

The federal district court in the instant case considered, in its August 27, 2009 ruling, whether plaintiffs had stated a claim for applicability of Article 2324 on solidary liability, and observed that "plaintiff has presented a *prima facie* case as to the applicability of Article 2324 of the Louisiana Civil Code in connection with the underlying torts of defamation, intentional infliction of emotional distress, and certain aspects of plaintiff's extortion claim, as discussed herein." *Id.*, p. 12.

Conduct that supported the existence of a conspiracy included that fact that in the defamatory emails, "Mr. Morrison refers to himself and Mrs. Morrison Dietz as "us" and "we," states that he and Mrs. Morrison Dietz 'are fully prepared to play hardball,' and further makes clear that the allegedly defamatory statements, the statements made with the purpose of causing emotional distress, and certain of the alleged extortionate communications are made by Defendant with the understanding and involvement of Defendant Mrs. Morrison Dietz." *Id.*

As such, after review of the evidence **only as of 2007,** the Federal district court concluded that "a prima facie case has been made that Article 2324 has ***18** application in this case, such that Article 2324 could, potentially, operate to permit a court or jury to conclude Mrs. Morrison Dietz "conspired," as contemplated by Article 2324, with Mr. Morrison to defame plaintiff, inflict emotional distress on plaintiff, and extort him." *Id.;* see, e.g., the September 14, 2007 email of Mr. Morrison, stating "now we will need to take more assertive actions" against Mr. Dietz (emphasis added); and the November 6, 2007 email of Mr. Morrison to three Louisiana residents (Mr. Dietz, Albert Dietz, and Scott Winstead), stating **"us,"** being he and Mrs. Morrison Dietz, are to take further threatened action; **"we"** are prepared to take "additional and stronger actions" and **"we"** are fully prepared to play "hardball" extremely swiftly and aggressively." *Id.* (Emphasis added.)

After the Federal district court's ruling, defendants together engaged in **additional** defamatory, emotionally distressing and extortionate conduct from 2007 thru 2010, all of which evidence was introduced and recognized by the District Court at trial. The court correctly noted that "Mr. Morrison assisted Anne Morrison with the drafting of a letter to a U.S. State Department Official, containing versions of these [defamatory and untrue] allegations." Judgment, p. 3. This was correct; Defendant admitted that he did assist in drafting the letter. V R. 991. The court further noted that Defendant "had no personal knowledge of any facts that would support those allegations, and that this information was provided by his sister." Judgment, p. 3. Defendant admitted that most of the defamatory information was second-hand from his sister. IV R. 881, 890; V R. 920.

Furthermore, Mrs Morrison prepared a false written statement that Mr. Dietz had kidnapped Angus and violated court child support orders, which Defendant used to prepare the false and defamatory correspondence to U.S. and Mexican officials and Bar licensing authorities. II R. 426-30. Indeed, Plaintiff's Exhibit 25, a Bar Complaint to the Navajo Nation penned and signed by Defendant, states "On behalf of my sister, Anne Bennett Dietz, and myself, I'm writing to report an ***19** extensive pattern of attorney misconduct and illegal activities..." Tr. Ex. P-25; IV R. 736. Defendant admitted she reviewed the Bar complaints for him. (V R. 912).

Finally, Albert Dietz testified that the emails and telephone calls of Defendant were on behalf of Anne Morrison, as Defendant stated in the emails and said verbally during the telephone calls: "I knew that he was working on behalf of Anne and himself, but it was both, it was Richard and Anne who were both pursuing what I viewed as an attempt to collect money from [plaintiff]" and I knew this because "it was clear that... they were not threats that he was making for himself. He was making them for Anne." And, he "absolutely" was writing the emails on behalf of Mrs Morrison. (IV R. 866-67; 742). Regarding these emails, Richard Morrison expressly admitted at trial: "Question: You were sending these demands on behalf of your sister? Answer: Yes." (IV R. 891-92).

The evidence accepted by the District Court at trial overwhelmingly proved the existence of a conspiracy between defendants, and, accordingly, the appropriateness of a determination of in solido liability under article 2324 such to support the apportionment of 50% fault to each defendant.

V. THE DISTRICT COURT'S EXTORTION DETERMINATION IS IN COMPLETE ACCORD WITH LAW AND THE EVIDENCE.

Defendant's extortion argument is incorrect because the tort of civil extortion is included under Civil Code article 2315 ("Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."). See id.

In a case on point, *Quina v. Rober's* 16 So.2d 558, 561 (La. App. Orleans 1944), the court held that a letter written to the plaintiff's employer by the defendant in an effort to coerce [extort] payment of a debt from the plaintiff, was an actionable tort under Article 2315. The court noted: "Art. 2315 of our Code is broad in its scope and contemplates redress to all who suffer injury as a consequence of the commission of an offense or quasi offense." *Id.* Further, as the ***20** U.S. Dist. Court stated in Schlesinger v. ES & H, Inc., WL 5182716, 2 (E.D. La. 2011): **"If Defendants committed civil conspiracy and extortion against Plaintiff, then that would be a violation of La. Civil Code 2315." Id.**

Moreover, in the instant case, this court awarded a lump sum in damages, as it was authorized to do, and did not specify which damages were occasioned by which tort. Therefore, defendants cannot state which portion of the damages applied to the extortion claim. The acts that constituted extortion also constituted intentional infliction of emotional distress and, in some instances, defamation. Thus, the court did not err in its award of damages, which must be maintained.

Defendant's argument is simply without merit in light of article 2315 and the authority he references is not supportive of his position. For example, Defendant's reliance upon Deville v. Frazier is clearly misplaced and not substantively supportive of his argument. *See id.*, 476 So.2d 10 (La. App. 3 Cir. 1985) (*Def's* Bri., p. 14). In *Deville* the court relied upon the fact that "[a]t no point did plaintiff assert that he was related to the children in question or that he was personally damaged by defendant's actions," yet, in the present proceeding the opposite is true, Mr. Dietz is the real party plaintiff at issue and, as proven at trial, was personally damaged by the actions of Defendant. *See id.*

Defendant's argument that "pursuing legal recourse is not extortion under Louisiana law" *(Defendant's Brief p. 15)* is equally misplaced because it fails to take into account that **Defendant and his sister did not simply "pursue legal recourse."** Defendant and his sister systematically over a lengthy period of time coupled the threat of disgrace, humiliation, and harm by way of claims of criminal activity and threats of prosecution and otherwise, as well as exposure to various other actions, **with** the demand for money and property to which they were not entitled to and such conduct clearly constitutes **extortion**

under Louisiana law. Extortion may be established by way of false or true statements and need only tend ***21** to expose one to humiliation or harm or otherwise **exploit** some fear. *See* LSA-R.S. 14:66; *Burnham Broad. Co. v. Williams*, 629 So.2d 1335 (La. Ct. App. 4 1993) ("Extortion" includes activities which tend to **exploit** fear of victim, and thus inducing party to give up any property right because of fear of economic loss qualifies as extortion); *State v. Hingle*, 677 So.2d 603 (La. Ct. App. 2 1996) ("Extortion" is defined as communication of threats to another with intent thereby to obtain anything of value or advantage; threat to accuse individual threatened or any member of his family of any crime shall be sufficient to constitute extortion.).

Defendant's argument mischaracterizes both the true nature of the exhaustive direct evidence of extortion presented at trial and applicable Louisiana law. Defendant's claim of no evidence of damages is false and completely at odds with the extensive evidence of damages detailed in Mr. Dietz's appellant's brief. The District Court's extortion findings and determination are well supported.

VI. THE DISTRICT COURT'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS DETERMINATION IS PROPER.

Defendant's activities were without question "'atrocious and utterly intolerable in a civilized community"' and without question caused "severe" pain.

In Taylor v. State 617 So.2d 1198, 1204 (La. App. 3 Cir. 1993), the Third Circuit held that defendant's conduct in instigating a criminal investigation against the plaintiff for his own purposes was outrageous and extreme. The Court held: "We recognize a legally protected right to be free from serious, intentional invasions of mental and emotional tranquility." id., at 1204; see also White v. Monsanto, 585 So.2d 1205, 1209 (La. 1991) ("Conduct which, viewed as an isolated incident, would not be outrageous or would not be likely to cause serious damage, can become such when repeated over a period of time." Id. (citing Rest. (Second) of Torts § 46, Comment (j) (both the intensity and the duration of the distress are factors to be considered in evaluating a pattern of conduct for IIED)).

***22** Pursuant to the foregoing authorities, the District Court correctly held that the conduct of the defendants detailed throughout the opinion "was outrageous and extreme and caused the plaintiff to suffer severe emotional distress." Judg., p. 5. Among the extensive egregious conduct was Defendant during 2010 asserting threats of great bodily harm and death as to Mr. Dietz to his ailing father Albert Dietz. (IV R. 867-68; IV R. 758). Also incredibly egregious was the fact of Defendant Mrs. Morrison, in conjunction with Defendant's email falsely asserting Mr. Dietz had no rights, refused to allow Mr. Dietz to see or speak to his children for four months and illegally took them to Mexico. (IV R. 864-65; 724). She also told the children that their father was "an international fugitive," which produced extreme distress to both Angus and the plaintiff. Judg., p. 5; II R. 329-31; IV R. 871. As detailed in the statement of facts section "1" above, Defendant and his sister authorized their Mexican attorney to use extremely "intense tactics." Id. See, II R. 430-36; 439. Further, Mrs. Morrison transmitted death threats. Judgment, p. 5. Tr. Ex. P-29; IV R. 764-65; III R. 592. The attorney Nicolas Shaheen testified that "Mr. Dietz received many threats of death by Mrs. Morrison." Id.

Defendant and his sister also repeatedly and falsely publicly accused Mr. Dietz of numerous criminal offenses, including an accusation to the principal of his children's' school and others that Mr. Dietz had a felony arrest warrant for child abduction. Judgment, p. 2; See, e.g., Trial Ex. P-16; II R. 426-30. Defendant also "said he was going to handle it so that [Mr. Dietz] would be barred from practicing law." IV R. 847. Defendant also filed at least fifteen false Bar Complaints against Mr. Dietz and circulated such to a private citizen, who then further circulated such to many others, including a U.S. State Department official. IV R. 740. Mr. Dietz testified that responding to the false Bar Complaints and investigations has been "my life for the last five years." IV R. 740. Considering the severity and seven year duration of the conduct, such was outrageous and extreme.

***23** Defendant also argues that Mr. Dietz did not prove that they "desired" to cause plaintiff severe distress. Regarding a defendant's intent to cause severe emotional distress, the Third Circuit in Taylor, supra, noted that harmful intent may be

presumed from the outrageous conduct of a defendant, which may show that the defendant knew or was "recklessly indifferent," to the effect of his actions:

> Although subjective intent can rarely be proven directly, in this instance, harmful intent can be presumed from the actions of Ledet. Given this fact, the trial court obviously found that Ledet realized to a virtual certainty that his actions would cause plaintiff to suffer anxiety and mental distress. At the very least, Ledet's actions indicated a reckless indifference to the likelihood of his actions causing the plaintiff emotional distress...

Taylor v. State 617 So.2d 1198, 1204 -1205 (La. App. 3 Cir. 1993).

As in Taylor, in this case, harmful intent may be presumed from Defendant's outrageous and lengthy course of vicious defamatory, threatening, and abusive conduct with precisely the intent to cause the Mr. Dietz severe emotional distress in order to coerce him to transfer property and money to his ex-wife. V R. 902-03.

Further, Defendant expressly admitted that he knew he was causing pain, having stated in his email of September 7, 2007 to Albert Dietz: "I feel sorry for the pain this must be causing you and your family..." Judgment, p. 2; Tr. Ex. p-31; IV R. 837-39. Defendant also intended to cause pain emotional distress to Mr. Dietz's family. Defendant admitted he indicated to Kurth Bousman in writing to "go ahead and blast" Mr. Dietz's **elderly**, sick father. (V R. 902).

It became clear that Defendant enjoyed causing emotional distress to Mr. Dietz and his family. As Defendant Mrs. Morrison stated in her December 18, 2009 email to her brother "[Defendant] Rich, I almost think you're really having fun." (V R. 945); Tr. Ex. P-39. Indeed, in an email dated February 2, 2010, Defendant congratulated himself on his "carrot-and-stick approach" in his communications with Mr. Dietz. (V R. 1002-03; Tr. Ex. P-50; Tr. Ex. P-36.

***24** Additionally, due to their false accusations of crimes, Defendants' harmful intent is presumed. "In Louisiana accusation of a crime is considered defamatory *per se*. *Cluse v. H & E Equip. Servs., Inc.*, 2009-574, 15 (La. App. 3 Cir. 2010), 34 So.3d 959, 970, citing *Redmond v. McCool*, 582 So.2d 262, 265 (La. App. 1st Cir. 1991). "Generally, defamation *per se* creates a **presumption** of falsity and malice which the defendant bears the burden of rebutting." *Id.* (emphasis added.).

Finally, Defendant argues, without citation of authority, that Mr. Dietz did not submit medical evidence ("[Mr. Dietz] offered no testimony of any doctor, therapist, or any type of trained mental health professional") as proof of his severe distress, and therefore cannot recover. *Defendant's Brief*, p. 18. However, it is well established in Louisiana that medical evidence is not required to prove severe emotional distress: "Severe and debilitating emotional distress need not be proven by clinical diagnosis in order for a claimant to recover related damages." *Guillot v. Daimlerchrysler Corp.*, (La. App. 4 Cir. 2010), 50 So.3d 173, 193, quoting *Dickerson v. Lafferty*, (La. App. 2 Cir. 2000) 750 So.2d 432, 434. Testimony of plaintiff alone is sufficient to establish severe emotional distress. See, e.g., *Monk v. St. ex rel. DOTD* (La. App. 3 Cir. 2005), 908 So.2d 688, 697 (plaintiff who did not seek medical attention established severe emotional distress by her testimony).

In the instant case, as detailed in Mr. Dietz's appellant's brief, numerous witnesses testified at length as to Mr. Dietz's extreme emotional distress, including Mr. Dietz's wife (II R. 336-39; 364-65; 376-80); Mr. Dietz's mother (III R. 615-17); Mr. Dietz's brother (III R. 639-40); Mr. Dietz's father (IV R. 836; 840-44; 858-60; 867) and Mr. Dietz (IV R. 725-26).

Mr. Dietz's wife, Iniani, testified in detail about the severe distress, constant stress, forgetfulness and weight loss suffered by Mr. Dietz due to the outrageous, extreme and continuing conduct of the defendants. (II R. 336-39). Iniani further testified that Mr. Dietz was short tempered, crunching his teeth, "start walking like ***25** crazy everywhere around," "don't eat right," "didn't sleep well," "been [staying] up all night," "waking up super early," "not resting enough," "not in peace." "it's too much." (II R. 364-65). She also revealed Mr. Dietz's severe distress when he arrived home after the murder attempt and shooting on August 11, 2011, including his pale appearance, shocked, stressed and otherwise upset reaction. (II R. 376-80).

Mr. Dietz himself testified that it was a “nightmare” for him and his family and that he was “just going crazy, as a father who couldn't talk to his kids, as a father who was worried about, frankly, the children being back with an abusive mother.” (IV R. 725-26; 769; 822-23; 864-65). Mr. Dietz expressed his distress and frustration over Morrison's fifteen false charges to the Bar Associations circulated to third parties. (IV R. 734-35; 773). Mr. Dietz also noted that the abuse had caused memory problems and he could no longer function well as a lawyer. (IV R. 734-35; 766-69; 773). Mr. Dietz had to withdraw from representation of clients due to extreme emotional distress. (IV R. 749-50; Tr. Ex. P-28). Regarding the continuing threats of prosecution and physical harm, Mr. Dietz testified that he had been “tortured” and “persecuted” (IV R. 769-771; 747; 758) and: “It's debilitating. The constant fear... you can't deal with it.” (IV R. 758). The proof of Mr. Dietz's severe emotional distress was more than sufficient.

VII. THE DISTRICT COURT'S AWARD OF DAMAGES IN RELATION TO THE DEFAMATION WAS PROPER.

Initially, please reference Statement of Facts sections “3,” “4,” and “5” of this brief for corrections as to some of Defendant's false assertions in this section.

An award of damages in a defamation case is left to the great discretion of the trier of fact and should not be disturbed absent a showing of manifest error. *Steed v. St. Paul's Uni. Methodist Ch.,* 728 So.2d 931 (La. App. Cir. 2 2/24/1999); *Garrett v. Kneass,* 482 So. 2d 876 (La. App. 2d Cir. 1986).

***26** Damages for defamation include both special damages and non-pecuniary or general damages. *Steed, supra; Lege v. White, 619 So. 2d 190* (La. App. 3d Cir. 1993). *Henderson v. Guillory,* 546 So. 2d 244 (La. App. 2d Cir. 1989), *writ denied,* 551 So. 2d 635 (1989). “The injury resulting from a defamatory statement may include non-pecuniary or general damages such as injury to reputation, personal humiliation, embarrassment, anxiety, hurt feelings, and mental anguish and suffering even when no special damage such as loss of income is claimed.” *Costello v. Hardy,* 03-1146, p. 14 (La. 1/21/04), 864 So.2d 129, 141; *Henderson, supra; Lege,* 619 So. 2d at 191. As to defamation damages, there is no need to establish the actual pecuniary value of the injury suffered. *Gertz v. Welch, Inc.,* 418 U.S. 323 (1974); *Trahan v. Ritterman,* 368 So.2d 181 (La.App. 1st Cir. 1979).

When words expressly or implicitly accuse the plaintiff of criminal conduct, the words are considered defamatory per se. *Cluse v. H & E Equipment Services, Inc.,* No. 09-574 (La.App. Cir.3 03/31/2010); *Elmer v. Coplin,* 485 So.2d 171 (La. App. 2d Cir.), *writ den.,* 489 So.2d 246 (1986) (“Our state supreme court has defined defamation, and has held words which accuse a person of criminal acts are defamatory per se and damages are presumed.”). When words are defamatory per se, the elements of falsity and malice are presumed. *Cluse,* supra.

As addressed in great detail earlier in this brief and in the Mr. Dietz's appellant brief, the evidence at trial overwhelmingly established, just as the District Court expressly found, that Defendant's extensive defamation of Mr. Dietz, including accusations of criminal conduct, was comprised of allegations of Defendant which simply were not true and Defendant suffered extensively.

The District Court was the “finder of fact” at trial. Defendant's attempt on appeal to distort the evidentiary record at trial and have this Court re-weigh evidence when, without question, substantial evidence of defamation damages was presented at trial to support the District Court's findings, is inappropriate.

***27 VIII. ALL OF THE DISTRICT COURT FINDINGS ARE WELL SUPPORTED BY SUBSTANTIAL EVIDENCE AT TRIAL.**

Initially, please reference Statement of Facts sections “1“ and “2” of this brief for corrections regarding some of Defendant's false assertions.

Defendant first argues that there was no evidence other than the testimony of the Mr. Dietz and his Mexican attorneys to support this Court's statement in the Judgment on page 2 that Mrs. Morrison "accused the plaintiff of committing numerous criminal offenses in Mexico when she possessed insufficient evidence to support these allegations." *Def's Bri.*, p. 22-23. The testimony of Mr. Dietz and his attorneys is, of course, competent evidence, and the District Court had every right to credit that evidence. Further, Defendant admitted that Mrs. Morrison was the source of his letters to the Bar Associations and U.S. and Mexican officials complaining of criminal activity. (IV R. 881; 890; V R. 920). She also wrote Defendant an email telling him she had gone to the Mexican DA or judge regarding criminal allegations and that Mr. Dietz should not be told. (V R. 981).

Next, Defendant disputes the District Court's finding that Defendant testified that he transmitted bar complaints to insurance fraud investigators in New York. However, that information seems contained in one of Defendant's emails to Mr. Bousman that was discussed at trial, in which Defendant referenced communications with insurance fraud investigators in New York. (V R. 975). When asked "So in addition to the bar organizations you contacted the NY Insurance Fraud Unit; is that correct?" he answered "That is correct." *Id.*

Defendant next disputes the District Court's finding that Mrs. Morrison's actions in the Fall of 2007 produced "negative personality changes" in one of her sons, Angus, on the grounds that the witnesses who testified as to the negative personality changes were not qualified to do so because they were not "experts in child psychology or any related field, and thus lacked the necessary expertise to ***28** draw conclusions about the behavior of the children. *Def'S Bri.*, p. 23. As discussed supra, "emotional distress need not be proven by clinical diagnosis" *Guillot*, 50 So.3d at 193, quoting *Dickerson v. Lafferty*, 32,658 (La. App. 2 Cir. 1/26/00), 750 So.2d 432, 434. Testimony alone is sufficient to establish emotional distress. See, e.g., Monk (La. App. 3 Cir. 6/29/05), 908 So.2d at 697.

Moreover, as addressed above in the statement of fact section "2" of this brief, the severe effect that defendants' conduct had upon Angus was established by the detailed testimony of Angus' stepmother, Iniani Dietz. Iniani Dietz also further testified as to the psychological evaluation by Dr. Bouillion in Lafayette, who found the boys' exposure to Mrs. Morrison put them at "great risk" to their well-being. (II R. 403-04). Mr. Dietz also testified that Mrs. Morrison underwent long term treatment for drug addiction (IV R. 672), was a cocaine addict (V R. 917) and "was suicidal for many years." (IV R. 782). He noted that the children had to undergo psychological counseling (IV R. 687) and that both boys were being physically and emotionally abused by their mother. (IV R. 745). This testimony was more than sufficient to establish Angus' emotional distress.

Defendant next disputes the finding that defendants "authorized their Mexican attorney to use intense tactics against the plaintiff" on the grounds that both defendants denied it and the statement was unsupported by the evidence. Def's Bri., p. 24. As addressed in statement of facts section "1" of this brief, Defendant's assertion is simply not true, substantial evidence supports the finding.

CONCLUSION AND PRAYER

It is respectfully submitted that Defendant's legal challenges are contrary to he great weight of the persuasive evidence presented at trial, without legal merit, and/or are harmless error such that the challenges simply do not rise to a level which warrants reversal of the District Court's substantive legal determinations.

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